88- 1831

Supreme Court, U.S.
FILED
MAY 4 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE
Supreme Court of the United States
OCTOBER TERM, 1988

ANGELO HOWARD,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PAUL M. WEISS

Paul M. Weiss, P.A.
231 St. Paul Place
Baltimore, Maryland 21202
(301) 547-2585

May 1989

ABS DUPLICATORS, INC. — 912 17th St. NW, Washington DC 20006 — 298-5537

QUESTIONS PRESENTED

1. What combination of the factors discussed in *Weatherford v. Bursey*, 429 U.S. 545 (1977) and its progeny is necessary to establish a Sixth Amendment violation?

2. What quantum of prejudice must be established before a criminal defendant is entitled to relief after establishing such a Sixth Amendment violation?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

STATEMENT 2

REASONS FOR GRANTING THE PETITION 3

CONCLUSION 8

APPENDIX A A-1

APPENDIX B B-1

TABLE OF AUTHORITIES

Cases: Page

Briggs v. Goodwin,
698 F.2d 486 (D.C. Cir.1983) 6-8

Clutchette v. Rushen,
770 F.2d 1469 (9th Cir.1985), *cert. denied*,
475 U.S. 1088 (1986) 5

Maine v. Moulton,
474 U.S. 159 (1985) 3, 6

Strickland v. Washington,
466 U.S. 668 (1984) 3

United States v. Brugman,
655 F.2d 540 (4th Cir.1981) 4,5

United States v. Costanzo,
740 F.2d 251 (3d Cir.1984), *cert. denied*,
472 U.S. 1017 (1985) 5

United States v. Dien,
609 F.2d 1038 (2d Cir.1979) 6

United States v. Irwin,
612 F.2d 1182 (9th Cir.1980) 6

United States v. Kelly,
790 F.2d 130 (D.C. Cir.1986) 4

United States v. Levy,
577 F.2d 200 (3d Cir. 1978) 6, 8

United States v. Mastroianni,
749 F.2d 900 (1st Cir.1984) 5

United States v. Morrison,
449 U.S. 361 (1981) 5-8

Page

United States v. Singer,
785 F.2d 228 (8th Cir.1986) 5

United States v. Steele,
727 F.2d 580 (6th Cir.), *cert. denied*,
467 U.S. 1209 (1984) 5

Weatherford v. Bursey,
429 U.S. 545 (1977) ..... *passim*

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

No. _____

ANGELO HOWARD,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner Angelo Howard petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The Order and Memorandum Opinion of the United States District Court for the District of Maryland (App., *infra*,

B-1 - B-9), and the opinion of the United States Court of Appeals for the Fourth Circuit (App., *infra*, A-1) are unreported.

JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was entered on January 10, 1989. A petition for rehearing was timely filed and was denied on February 21, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment VI to the Constitution of the United States provides in pertinent part:

> In all criminal prosecutions, the accused shall . . . have the Assistance of Counsel for his defense.

STATEMENT

1. On October 2, 1985, Petitioner and ten co-defendants were indicted for violation of Title 21 U.S.C. Section 846, conspiracy to possess with intent to distribute heroin and cocaine.

2. On October 18, 1985, unbeknownst to Petitioner, two co-defendants, Joan White and Wanda Collins, entered into cooperation agreements with the Government pursuant to which White testified before a grand jury on October 23, 1985.

3. On November 8, 1985, White was supplied by the Government with a recording device, allegedly due to efforts by Appellant and certain co-defendants to influence her testimony. Utilizing this recording device, White subsequently initiated a number of calls and conversations with Petitioner during which Petitioner's trial strategy was discussed. Additionally,

White and Collins were present with Petitioner and his counsel during a meeting of defendants at which trial strategy had been discussed.

4. One week prior to Petitioner's trial, both White and Collins were debriefed by the Government. Additionally, prior to trial, White was intentionally situated by the Government in the same hotel as two other cooperating witnesses, Michelle Sanders and Abu Siddiqui, thereby placing her in an ideal position to discuss her "inside" knowledge of Petitioner's trial strategy.

5. Joan White, Wanda Collins, Michelle Sanders and Abu Siddiqui all testified as Government witnesses at Petitioner's trial.

REASONS FOR GRANTING THE PETITION

1. The Constitution guarantees to each criminal defendant the right "to have the Assistance of Counsel for his defense." U.S. Const. amend. VI; *Maine v. Moulton*, 474 U.S. 159 (1985). Furthermore, it is well established that this right encompasses the equally important guarantee of the right to the effective assistance of that counsel. *Strickland v. Washington*, 466 U.S. 668 (1984). A claim of ineffective assistance of counsel may be sustained when affirmative acts of intrusion on the Government's part result in disclosure of confidential communications. *See Weatherford v. Bursey*, 429 U.S. 545 (1977).

In *Weatherford*, this Court rejected Bursey's claims, asserted under 42 U.S.C. Section 1983, that his Sixth Amendment rights had been violated by the attendance of undercover agent Weatherford at meetings between Bursey and his attorney during the time Bursey was a defendant in a criminal action. This Court held that Bursey could not establish a Sixth

Amendment violation because Weatherford had not communicated anything about the defense meetings to anyone and Bursey therefore could not show "at least a realistic possibility of injury to [himself] or benefit to the State." 429 U.S. at 558. This Court went on to note, however, that

> [H]ad Weatherford testified at Bursey's trial as to the conversations between Bursey and Wise [his attorney]; had any of the State's evidence originated in these conversations; had those overheard conversations been used in any other way to the substantial detriment of Bursey; or even had the prosecution learned from Weatherford, an undercover agent, the details of the Bursey-Wise conversations about trial preparations, Bursey would have a much stronger case.

Id. at 554 (footnote omitted).

In interpreting the *Weatherford* decision, some lower courts have analyzed the passage cited above and discerned four factors to be considered when assessing a claimed Sixth Amendment violation based on invasion of the defense camp:

> (1) was evidence used at trial produced directly or indirectly by the intrusion; (2) was the intrusion by the government intentional; (3) did the prosecution receive otherwise confidential information about trial preparations or defense strategy as a result of the intrusion; and (4) were the overheard conversations and other information used in any other way to the substantial detriment of the defendant?

See e.g., United States v. Kelly, 790 F.2d 130, 137 (D.C.Cir. 1986); *United States v. Brugman,* 655 F.2d 540 (4th Cir.1981).

The issue of what combination of the *Weatherford* factors is necessary to establish a Sixth Amendment violation has divided the Circuit Courts of Appeal. The Third Circuit has held

that a violation may be established by showing any one of the four factors. *United States v. Costanzo*, 740 F.2d 251, 254-55 (3d Cir.1984), *cert. denied*, 472 U.S. 1017 (1985). The Fourth and Ninth Circuits, by evaluating the factors seriatim, have implied that each factor alone is sufficient to establish a violation. *See Clutchette v. Rushen*, 770 F.2d 1469, 1471-72 (9th Cir.1985), *cert. denied*, 475 U.S. 1088 (1986); *United States v. Brugman, supra* at 546. Other courts have relied on various combinations of the factors. The Sixth and Eighth Circuits have held that an intentional intrusion alone does not establish a violation, unless there is communication of confidential information or some other form of prejudice or the threat thereof. *United States v. Steele*, 727 F.2d 580 (6th Cir.), *cert. denied*, 467 U.S. 1209 (1984); *United States v. Singer*, 785 F.2d 228 (8th Cir.), *cert. denied*, ____U.S.____, 107 S.Ct. 273 (1986). Finally, one circuit has held that a defendant must show prejudice when the intrusion is unjustified, but that once the defendant has shown communication of confidential information to the prosecution the burden shifts to the government to show lack of prejudice. *United States v. Mastroianni*, 749 F.2d 900, 907-08 (1st Cir.1984).

In *United States v. Morrison*, 449 U.S. 361 (1981), this Court held that even if there is a Sixth Amendment violation as a result of a deliberate governmental intrusion, the defendant would not be entitled to a dismissal of the indictment unless there was a showing of "demonstrable prejudice, or substantial threat thereof." 449 U.S. 365. The *Morrison* decision, however, did not address the issue of what *Weatherford* factors are necessary to establish such a Sixth Amendment violation.

Applying the aforementioned four factors to this case, it is clear that the intrusion by the government was intentional. The government sought to justify the intrusion by White by alleging that Petitioner had threatened her and attempted to

influence her testimony. Such considerations, however, must take a back seat to the preservation of a defendant's Sixth Amendment rights. *See e.g., Maine v. Moulton,* 474 U.S. 159 (1985). No such justification was given as to Wanda Collins. Additionally, the fact that both White and Collins testified at Petitioner's trial is significant because they had the opportunity to "mold" their trial testimony to be the most prejudicial in light of their knowledge of Petitioner's strategies and defenses. *See Weatherford v. Bursey,* 429 U.S. at 554. Finally, the placement of White and Collins in the same hotel as other government cooperating witnesses prior to trial, with their knowledge of the confidential trial strategies of Petitioner, leaves open the possibility that such knowledge was shared with the other witnesses, and was factored, consciously or unconsciously, into their trial testimony.

2. While *Weatherford* and *Morrison* made it clear that some prejudice must be shown as an element of a Sixth Amendment violation, the Circuit Courts of Appeals are divided on what quantum of prejudice must be established before a defendant is entitled to relief. The Third and District of Columbia Circuits have held that disclosure of confidential information by itself creates a sufficient showing of prejudice. *United States v. Levy,* 577 F.2d 200 (3d Cir.1978); *Briggs v. Goodwin,* 698 F.2d 486 (D.C.Cir.1983). The focus in these cases is on the proof of transmission of any confidential information of even the slightest potential strategic value. The Second and Ninth Circuits, by contrast, have found that prejudice exists only when information gained through an intrusion is actually used against the defendant. *United States v. Dien,* 609 F.2d 1038, 1043 (2d Cir.1979); *United States v. Irwin,* 612 F.2d 1182, 1186 (9th Cir.1980).

It is submitted by Petitioner that there is a compelling reason for concluding, as did the Third and District of Columbia Cir-

cuits, that the disclosure of confidential defense information by itself creates a sufficient showing of prejudice. In *Briggs*, the court discussed the prejudice requirement:

> The threat of significant harm required by *Weatherford* does not, however, have to amount to "prejudice" in the sense of altering the actual outcome of the trial. Although the Sixth Amendment is concerned primarily with fairness at trial, it is not limited to that function. The right to counsel protects the whole range of the accused's interests implicated by a criminal prosecution. Those interests may extend beyond the wish for exoneration to include, for example, the possibilities of a lesser charge, a lighter sentence, or the alleviation of "the practical burdens of a trial." (footnotes omitted).

698 F.2d at 494. The *Briggs* court went on to reason that

> [t]he appellants need not prove that the prosecution actually used the information obtained. The prosecution makes a host of discretionary and judgmental decisions in preparing its case. It would be virtually impossible for an appellant or a court to sort out how any particular piece of information in the possession of the prosecution was consciously or subconsciously factored into each of those decisions. Mere possession by the prosecution of otherwise confidential knowledge about the defense strategy or position is sufficient in itself to establish detriment to the criminal defendant. Such information is "inherently detrimental, . . . unfairly advantage[s] the prosecution, and threaten[s] to subvert the adversary system of criminal justice."

698 F.2d at 494-95.

In this case, cooperating witnesses Joan White and Wanda Collins were both exposed to confidential information as a

result of an intentional intrusion. Undoubtedly, this "inherently detrimental" information was turned over to the government when White and Collins were debriefed prior to trial. Pursuant to the sound reasoning of *Briggs* and *Levy*, the mere possession by the government of this confidential information should be sufficient by itself to establish the prejudice required by *Weatherford* and *Morrison*. Additionally, the fact that both White and Collins testified at Petitioner's trial is significant in evaluating the prejudice requirement because they had the opportunity to "mold" their trial testimony to be the most prejudicial in light of her knowledge of Petitioner's strategies and defenses. *See Weatherford v. Bursey*, 429 U.S. at 554. Finally, the placement of White and Collins in the same hotel as other government cooperating witnesses prior to trial, with their knowledge of the confidential trial strategies of Petitioner, leaves open the possibility that such knowledge was shared with the other witnesses, and was factored, consciously or unconsciously, into their trial testimony.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

PAUL M. WEISS

Paul M. Weiss, P.A.
231 St. Paul Place
Baltimore, Maryland 21202
(301) 547-2585

May 1989

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed, postage prepaid, to J. Sedwick Sollers, III, Assistant United States Attorney for the District of Maryland, 101 West Lombard Street, Baltimore, Maryland 21201, and to the Office of the Solicitor General, United States Department of Justice, Constitution Avenue and 10th Street, N.W.,Washington, D.C. 20530, on this _____ day of May, 1989.

PAUL M. WEISS

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

[UNPUBLISHED]

No. 88-6009

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ANGELO HOWARD, a/k/a Bey Bey

Defendant - Appellant

Appeal from the United States District Court for the District of Maryland, at Baltimore. Alexander Harvey, II, Chief District Judge. (CR—85-507-H; C/A No. 87-2590-H)

Submitted: December 7, 1988 Decided: January 10, 1989

Before RUSSELL and SPROUSE, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Angelo Howard, Appellant Pro Se. Joseph Sedwick Sollers, III (OFFICE OF THE U.S. ATTORNEY) for Appellee.

PER CURIAM:

Angelo Howard appeals from the district court's order refusing relief under 28 U.S.C. § 2255. Our review of the record and the district court's opinion discloses that this appeal is without merit. Accordingly, we affirm on the reasoning of the district court. *United States v. Howard*, Cr. No. 85-507-H; C/A No. 87-2590-H (D. Md. Feb. 18, 1988). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ANGELO G. HOWARD	*	
Petitioner	*	CIVIL NO. H-87-2590
v.	*	
	*	CRIMINAL NO. H-85-0507
UNITED STATES OF AMERICA	*	

* * * * oOo * * * *

ORDER

For the reasons stated in the Memorandum Opinion of this date, it is this 17th day of February, 1988 by the United States District Court for the District of Maryland,

ORDERED:

1. That petitioner's motion for relief under 28 U.S.C. § 2255 be and the same is hereby denied; and

2. That the Clerk is directed to send a copy of this Memorandum Opinion and a copy of this Order to petitioner and to Assistant United States Attorney J. Sedwick Sollers, III, Esq.

/s/ Alexander Harvey II
Chief, United States District Judge

FILED
FEB. 18, 1989
AT BALTIMORE
CLERK U.S. DISTRICT COURT
DISTRICT OF MARYLAND

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ANGELO G. HOWARD	*	
Petitioner	*	CIVIL NO. H-87-2590
v.	*	
	*	CRIMINAL NO. H-85-0507
UNITED STATES OF AMERICA	*	

* * * * oOo * * * *

MEMORANDUM OPINION

Presently confined in the Federal Correctional Institution in Danbury, Connecticut, petitioner, Angelo G. Howard, has filed a motion in this Court under 28 U.S.C. § 2255, seeking to vacate a sentence previously imposed by this Court. A previous § 2255 motion addressed to a separate sentence being served by petitioner was denied by this Court in an Order dated September 30, 1986. *Howard v. United States,* Civil No. H-86-0036. The Fourth Circuit affirmed this Court's ruling in that prior case. *United States v. Howard,* No. 86-7696 (4th Cir. July 2, 1987).

Following a lengthy jury trial in this Court, petitioner and five co-defendants were convicted on January 31, 1986 of conspiring to distribute heroin and cocaine. *United States v. Kane, et al.,* Criminal No. H-85-0507. Petitioner was later sentenced fo a fifteen year term of imprisonment. Petitioner and his co-defendants appealed to the United States Court of Appeals for the Fourth Circuit. In a *per curiam* Opinion, the Fourth Circuit affirmed the convictions and sentences of all defendants, including that of petitioner. *United States v. Howard,* ____ F.2d ____, No. 86-5549 (4th Cir. February 5, 1987) (Unpublished).

Thereafter, in a separate case, petitioner plead guilty to a charge of distributing cocaine. *United States v. Howard,* Criminal No. H-86-0036. In that case, petitioner was sentenced to a term of ten years imprisonment, the sentence to run concurrently to the sentence imposed in Criminal No. H-85-0507.

Petitioner has now filed a rambling, discursive and somewhat incomprehensible motion under 28 U.S.C. § 2255. Liberally construed, this motion presents the following claims: (1) that petitioner's Sixth Amendment rights were violated when the government taped the conversation of a government witness who testified at the trial; (2) that petitioner's right to confront witnesses called by the government was violated when cross examination of Detective Caster was limited; (3) that a severance should have been granted because petitioner was convicted on evidence not related to the instant offense; (4) that petitioner's constitutional rights were violated when the government breached an alleged plea agreement previously reached with petitioner; (5) that the Court's jury instructions were improper; (6) that the indictment was duplicitous; (7) that the government was guilty of prosecutorial misconduct during the trial; (8) that petitioner was denied his discovery rights; (9) that the Court improperly denied petitioner's right to a hearing under *Franks v. Delaware,* 438 U.S. 154 (1978); (10) that there was a violation of the sequestration rule during the trial; and (11) that the indictment was insufficient.

In support of its motion, plaintiff has submitted a sixty-seven page memorandum and various exhibits. Pursuant to an Order of Court, the United States Attorney has filed a response to the pending motion and has submitted various excerpts from the transcript of the trial proceedings. Although the government has responded to "petitioners' motion" and has referred in its opposition to "petitioners", it is apparent that the pending § 2255 motion presents claims of Angelo Howard

only.[1] More recently, petitioner has filed a reply to the government's response and a supplemental memorandum in support of such reply.

After a review of the record here, this Court concludes that there is no merit to any of the claims presented by the pending motion. Inasmuch as no substantial question has been raised by petitioner's claims, there is no need for an evidentiary hearing. *Raines v. United States*, 423 F.2d 526, 529-31 (4th Cir. 1970). The record in this case includes all the pleadings recently filed by petitioner and by respondent as well as all of the papers on file in Criminal No. H-85-0507. Included among these documents are transcripts of petitioner's trial and motion proceedings[2] and exhibits admitted in evidence at the trial. the trial. These files and records conclusively show that petitioner is not entitled to the relief that he is seeking here.

I

Prior Trial and Appellate Proceedings

The one count indictment in Criminal No. H-85-0507 charged eleven individuals with a conspiracy to distribute both cocaine and heroin. Six defendants went to trial. The principal witnesses for the government were four immunized accomplices of the defendants. Numerous tapes of conversations between informants and members of the conspiracy were played before the jury. All six defendants were found by the jury to be guilty as charged.

In sentencing petitioner on March 18, 1986, the undersigned judge noted that petitioner had been aggressively represented by counsel and had received a fair trial. It was further noted

---

[1]Only Angelo Howard signed the motion, and the case has been docketed in his name alone.

[2]The record includes some 12 volumes of transcripts.

that the evidence produced against petitioner at the trial was overwhelming. The evidence at trial indicated that petitioner had been a top lieutenant of a wide-spread narcotics operation in the Baltimore Metropolitan area. Narcotics paraphernalia and firearms had been found at petitioner's residence and were admitted in evidence. At the time of sentencing, petitioner's propensity for violence had further been disclosed by a threat that he had communicated to a witness in a taped telephone conversation. Petitioner had threatened the witness with bodily harm because she had provided information to the government. Because of these facts and because of petitioner's numerous prior convictions in state courts, the maximum fifteen year sentence was imposed. (Tr. 1596-1598).

In the appeal taken to the Fourth Circuit, petitioner and the other defendants raised numerous issues concerning the admission and sufficiency of the evidence, the Courts allocation of and restrictions on preemptory strikes, the Court's application of collateral estoppel against a defendant, the alleged ineffective assistance of counsel, the conduct of the trial by the trial judge and the trial court's denial of defendants' motions to sever. *United States v. Howard, et al., supra, per curiam* Opinion of February 5, 1987 (Slip Op. at 3). In that Opinion, the Fourth Circuit found all of defendants' contentions to be meritless and affirmed the judgments and sentences.

Four of the claims pressed by petitioner in his pending § 2255 motion were considered and rejected by the Fourth Circuit in the appeal. The Fourth Circuit found (1) that this Court did not err in refusing to hold a pre-trial evidentiary hearing under *Franks v. Delaware;* (2) that government counsel was not guilty of misconduct; (3) that defendants had not been improperly denied discovery or *Jencks* materials, and (4) that the trial court had properly denied defendant's motion for a severance. For the reasons stated by the Fourth Circuit in

its Opinion of February 5, 1987, this Court concludes that there is no merit to these four claims which have been raised once again by petitioner in this § 2255 case.

II

Sixth Amendment Claim

During the course of the trial, counsel for petitioner moved for a mistrial, claiming that petitioner's Sixth Amendment rights had been infringed. Joan White, one of the co-defendants in the case, cooperated with the government and testified at the trial. A telephone conversation between petitioner and Ms. White occurred on November 8, 1985, and that telephone conversation was recorded. In moving for a mistrial, counsel for petitioner contended that these conversations related to defense strategy in the case and that petitioner's Sixth Amendment rights were thereby infringed.

After hearing argument (Tr. 761-765), and after listening to the tape, the Court denied the motion for a mistrial. (Tr. 1393). The Court ruled that in the cases relied upon by counsel for petitioner, defense strategy had been exposed. In this particular case, the Court found that discussion of the events was minimal, and that there was no strategy exposed by the taped conversation wich would have given the government any particular advantage. (Tr. 1393).

Following its review of the record here, this Court concludes that its earlier ruling was correct. The witness White had been given a recording device because of attempts by petitioner and others to threaten her and influence the testimony which she would be rendering at the trial. Indeed, petitioner was indicted in a separate case on a charge of witness tampering. Information learned by the prosecutor in listening to the tape was not used at the trial, and counsel for petitioner had been

given the tape before the trial began so that it could be used for purposes of cross examining Ms. White. Ms. White had been instructed by the prosecutors that she was not to discuss with petitioner or with any of the co-defendants anything having to do with legal strategy and that the government was merely interested in having her record attempts to influence her testimony.

Under these circumstances, there was no violation of petitioner's Sixth Amendment rights at the trial. Accordingly, this Court concludes that there is no merit to the Sixth Amendment claim advanced by petitioner in his pending § 2255 motion.

III

The Alleged Breach of a Plea Agreement

At the trial, counsel for petitioner asked the Court to enforce an alleged plea agreement which she claimed had been reached between her client and the government. A hearing was held, and the Court denied the motion to enforce. (Tr. 264-269). Following its review of the record here, this Court will reafffirm its previous ruling.

There were various discussions between the prosecutor and counsel for petitioner relating to a possible plea by petitioner to the indictment. No agreement was ever reduced to writing, and the record further discloses that no oral agreement was ever reached. After hearing from counsel, the Court found that there had been no meeting of the minds concerning the terms and conditions of a plea agreement between petitioner and the government. Since no agreement was ever reached, there is no merit to petitioner's contention that his constitutional rights were infringed when the Court declined to enforce a plea agreement between him and the government.

IV

Other Claims

After due consideration of each of the other claims asserted by petitioner in his § 2255 motion, this Court concludes that they are all without merit. Most of these other claims do not even involved alleged violations of petitioner's constitutional rights and are therefore not subject to redress by way of a motion filed under 28 U.S.C. § 2255. Petitioner has merely contended that there were various errors in the conduct of his trial.

The record here discloses that Detective Caster was adequately cross examined by counsel for defendants. No constitutional or other error occurred because of the Court's limitation of the cross examination of this witness.

The Court has once again reviewed its charge to the jury. At the trial, the Court's proposed instructions were discussed at length with counsel for defendants. This Court concludes that no constitutional error was committed when the Court charged the jury as it did.

Petitioner has not met his burden of showing that his conviction was the result of knowingly perjured testimony presented by the government. Petitioner has done no more than point to minor inconsistencies in the testimony of different witnesses. There has likewise been no showing of a violation of the sequestration order of the Court. Merely because some of the witnesses stayed at the same hotel is not an indication that they violated the Court's sequestration order.

Finally, there is no merit to petitioner's claims that the indictment was duplicitous and that it was insufficient for the conduct of a fair trial. Deficiencies in an indictment do not ordinarily form the basis for post conviction relief unless the defi-

ciency made the trial so egregiously unfair as to deprive a defendant of due process. *Ashford v. Edwards*, 780 F.2d 405, 407 (4th Cir. 1985). This Court has reviewed the indictment returned by the grand jury in petitioner's criminal case. The indictment properly complied with Rule 7(c), F.R.Crim.P. It was not duplicitous and the trial which proceeded under the indictment was a fair one which did not result in the deprivation of any of petitioner's constitutional rights.

For all these reasons, a separate Order will be entered denying petitioner's motion for relief under § 2255.

/s/ Alexander Harvey II
Chief, United States District Judge

DATED: February 17, 1988

FILED
FEB 18 1989
AT BALTIMORE
CLERK U.S. DISTRICT COURT
DISTRICT OF MARYLAND